

Cushing, Robert A. Jr.

From: Lance Ruck [REDACTED]
Sent: Friday, July 30, 2004 9:10 AM
To: [REDACTED]
Cc: District #2; District #8; CityStreets [REDACTED] Mayors_Office;
[REDACTED]
Subject: Unsafe Condition on Doniphan Drive

Mr. White:

Councilman Cushing asked me to aid Mr. Coles, Director of Streets for the City of El Paso, in resolving the unsafe condition of Doniphan Street. Having now looked at the file, it is apparent that this situation has gone on well over a year, numerous meeting have been held with no result, and it is the position of BNSF and/or SWIG that the Department of Transportation of Texas and/or New Mexico is ultimately responsible. However, the city did close off numerous lanes at the request of BNSF to fix the problem and rather than fix the problem, numerous planks were removed adjacent to the East lane and simply left right next to the road. This was over four months ago! Since that time and earlier, the City of El Paso has been incurring unnecessary expenses to protect the citizens of Texas and New Mexico who travel over Doniphan Drive due to the unsafe SWIG Railroad Crossing. While SWIG may have a right to rail service, it cannot be at the continuous expense of the City of El Paso and also place the traveling public at risk or considerable inconvenience (lanes of traffic closed indefinitely).

I advised Trainmaster Toyoya that I will attend the August 13 Safety Meeting in El Paso. By copy of this email, I am also inviting Mr. Coles and Representatives Cushing and Cobos to hear how and when the BNSF and SWIG plan to resolve this issue. Be aware that Assistant Street Director Pucol had previously advised Spencer Arndt of BNSF of his intention to pave over the Swig Crossing and charge the BNSF for previous costs incurred by the City of El Paso for the cost of the barricades. By copy of this email to Mayor Wardy, I am advising that he should get a legal opinion from the City Attorney as to the legal ramifications of such an action. Obviously, such an action will bring some very bad publicity to all parties but I believe the City has such a right to protect it's citizens, particularly in view of the lack of cooperation from BNSF to date. Waiting for Department of Transportation for the State of New Mexico to authorize money in the 2005 budget is not a viable alternative. Absent an immediate solution by BNSF and/or SWIG to be completed or proposed by the August 13 Safety Meeting, City Council should place an agenda item for "Discussion and Action on correcting the unsafe condition of Doniphan Drive at the SWIG Rail Crossing"! Included as backup on the City Webpage should be all communications (including this email) between the City of El Paso and BNSF and/or SWIG on this matter. Even assuming Council does not wish to pave over the rail entrance to SWIG at this time, they should consider legal action against BNSF and/or SWIG that would require reimbursement of costs to date and future cost for maintaining the barricades. Unfortunately, this will do nothing to stop the inconvenience to the traveling public or the unsafe condition.

During my 23 years as a Union Safety Representative, BNSF stated "Safety if the First Importance"; I would hope that is still true? Thanking you in advance for your cooperation in this matter, I am

Lance E. Ruck
BNSF Employee
Citizen of El Paso

8/24/2004

Cushing, Robert A. Jr.

From: Lance Ruck [REDACTED]
Sent: Monday, August 23, 2004 4:16 PM
To: mayor@elpasotexas.gov; citystreets@elpasotexas.gov
Cc: district#1@elpasotexas.gov; district#2@elpasotexas.gov; district#3@elpasotexas.gov;
 district#4@elpasotexas.gov; district#5@elpasotexas.gov; district#6@elpasotexas.gov;
 district#7@elpasotexas.gov; district#8@elpasotexas.gov; [REDACTED]
Subject: Update on Unsafe condition on Doniphan Drive: Recommendation

Dear Mayor Wardy:

You were previously copied my email to BNSF General Manager Gregory White relative to the unsafe condition of the SWIG Railroad Crossing on Doniphan Drive which is causing considerable inconvenience to the traveling public and considerable expense to the City of El Paso to protect the unsafe RR Crossing (original email attached for your convenience). Please consider this email an update on the situation and a recommendation relative to Item 19C. on tomorrow's City Council Agenda.

I received no response from any party at BNSF to my original email. After viewing the site at 6:30 AM on August 12 to confirm there had been no change, I visited with local BNSF Trainmaster Tofoya by phone to advise that I would be attending the next day's safety meeting with several City Councilmen and representatives from the Street Department. Later that morning I received a call from Superintendent Van Tassel and he advised that the local safety meeting would not be a proper venue and that BNSF might prohibit participation if necessary. I agreed that I would not bring anyone to the meeting and Mr. Van Tassel stated he would provide me with an email detailing the internal email generated since my July 30 missive and leave a phone message with the name and phone number of the proper BNSF official to speak with, one Ms. Colleen Deines. Mr. Van Tassel failed to provide any email or the contact person that day or to date.

I attended the local BNSF Safety Meeting on August 13, briefed the Committee on the problem, and stated my belief that the safety of employees working SWIG and the traveling public is a legitimate concern of the Committee. General Manager White instructed the new Roadmaster to remove any planking from the roadway that day and stated a meeting will be held at the Swig location at 9 AM on Thursday, August 19 in which all parties would attend. I asked that he confirm the meeting would go off as scheduled. As I got no confirmation, I again visited with Trainmaster Tafoya at BNSF property around 6:30 AM on August 19 to insure the meeting was still scheduled; he stated it was as far as he knew but would try to confirm. When Councilmen Cushing and I arrived at the site, some planking had been removed from close proximity to the warning barrels but many had now been stacked in the East Lane of traffic protected by the barricades. As only Gerald Pucol from the Streets Department was present, I walked over to the SWIG Office to inquire about the meeting. Local SWIG Vice President Rudy Silva informed me this is the first notification he has received of any meeting. I ran into Trainmaster Tafoya out side the office and he explained he was instructed to represent BNSF at the meeting, albeit he had no authority to answer any questions posed to him. No one from NM DOT was present and when SWIG denied all responsibility/accountability for any expenses for the barricades and/or fixing the track, Mr. Cobos left the meeting. Councilman Cushing and I had further discussions in order to facilitate some type of resolution to the problem.

By the time I arrived home, Mr. Silva had rescheduled a meeting for 1 PM Monday, August 23 and advised that NM DOT would be present at the meeting. This meeting recently concluded and Ms. Colleen Deines is to email City Streets employee Pucol and/or Mr. Cushing their plans for a "temporary fix" that could be in place by Friday. While Mr. Gonzales of NM DOT stated it is not the City of El Paso's responsibility to protect a private rail spur in the State of New Mexico, no party would assume any responsibility for the previous or future costs of the barricades. Also, it is noted that while Mr. White indicated BNSF had already approved funding for this project and Mr. Silva believed \$250,000 had been allocated by New Mexico, such is not the case. New Mexico has "requested" that amount in the highway budget process and BNSF has stated they will match whatever New Mexico provides. Suffice to say the permanent repair could not begin before winter and could be years away, assuming funding is granted by New Mexico.

8/24/2004

Accordingly, it is my recommendation that the City Council take action to notify the Public, State of New Mexico, City of Sunland Park, BNSF, and SWIG of the time and date that the barricades will be taken down wherein the responsible entities can protect the SWIG rail spur across a New Mexico highway. If BNSF completes a "temporary fix" by Friday as stated, the need for further protection will be moot. I recommend you allow 7 to 10 working days before you remove the barrels and seek notification from all media in El Paso and Southern New Mexico. Please consider this email with attachment as backup for item 19C. on tomorrow's City Council Agenda and I shall be present to address Council and answer any questions they may have concerning this matter. Other than that, this should conclude my attempt to aid the resolution of this situation as all parties are now painfully aware of the problem, or should be, relative to the expenses the City has incurred since October of 2003. Absent any change of heart from BNSF, It is also my recommendation that the City consider legal action against BNSF to recover all costs incurred.

Sincerely,

Lance E. Ruck
Citizen of El Paso
Employee of BNSF